

ICO call for views on a direct marketing code of practice

The Information Commissioner is calling for views on a direct marketing code of practice.

The Data Protection Act 2018 requires the Commissioner to produce a code of practice that provides practical guidance and promotes good practice in regard to direct marketing.

While direct marketing is an important and useful tool to help organisations engage with people in order to grow their business or to publicise and gain support for their causes, it can also be intrusive and have a negative impact on people if done badly. This can cause reputational damage to organisations and, in some cases, result in fines or other regulatory action for breaking data protection laws.

So it is important that organisations ensure their marketing activities are compliant with data protection legislation (the General Data Protection Regulation and Data Protection Act 2018) and, where necessary, the Privacy and Electronic Communications Regulations 2003 (PECR).

We have previously published detailed [direct marketing guidance](#). The new code will build on that guidance and address the aspects of the new legislation relevant to direct marketing such as transparency and lawful bases for processing, as well as covering the rules on electronic marketing (for example emails, text messages, phone calls) under PECR.

The European Union is in the process of replacing the current e-privacy law (and therefore PECR) with a new ePrivacy Regulation (ePR). However the new ePR is yet to be agreed and there is no certainty about what the final rules will be. Because of this we intend for the direct marketing code to only cover the current PECR rules until the ePR is agreed. Once the ePR is finalised and the UK position in relation to it is clear we will produce an updated version of the code which takes this into account as appropriate.

This call for views is the first stage of the consultation process. The Commissioner is seeking input from relevant stakeholders, including trade associations, data subjects and those representing the

interests of data subjects. We will use the responses we receive to inform our work in developing the code.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Call for Views
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the call for views, please email the [Direct Marketing Code team](#).

Please send us your views by **24 December 2018**.

Privacy statement

For this call for views we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Questions

- Q1 The code will address the changes in data protection legislation and the implications for direct marketing. What changes to the data protection legislation do you think we should focus on in the direct marketing code?

There is a general need for guidance on any provisions of the new law which the ICO considers to be relevant to direct marketing, regardless as to the medium through which that direct marketing might be carried out.

- Q2 Apart from the recent changes to data protection legislation are there other developments that are having an impact on your organisation's direct marketing practices that you think we should address in the code?

☐ **Yes**

☐ No

- Q3 If yes please specify

The development of new technology and communications platforms and channels continues to move at rapid pace. The UK is, of course, at the forefront of technological innovation. Paragraph 36 of the existing ICO guidance on direct marketing explains that the definition of 'direct marketing' covers any means of communication, is not limited to traditional forms of marketing, and can extend to online marketing, social networking or other emerging channels of communication. Detailed guidance on how the law applies to these innovative methods of communication from a direct marketing perspective would be very useful.

- Q4 We are planning to produce the code before the draft ePrivacy Regulation (ePR) is agreed. We will then produce a revised code once the ePR becomes law. Do you agree with this approach?

☐ **Yes**

☐ No

Q5 If no please explain why you disagree

Although it seems sensible to produce the code before the ePrivacy Regulation is agreed because the date for its implementation is currently unknown, we would point out the very serious implications for businesses if the text of the Regulation necessitates material changes to the code and to business practices.

Q6 Is the content of the ICO's existing direct marketing guidance relevant to the marketing that your organisation is involved in?

☐ **Yes**

☐ No

Q7 If no what additional areas would you like to see covered?

Please see our response to Q3.

Q8 Is it easy to find information in our existing direct marketing guidance?

☐ **Yes**

☐ No

Q9 If no, do you have any suggestions on how we should structure the direct marketing code?

Although the existing guidance is easy to use, it needs to be updated (via the code) to reflect changes in technology (again please see our response to Q3). In particular, examples/case studies are very useful.

Q10 Please provide details of any case studies or marketing scenarios that you would like to see included in the direct marketing code.

It would be useful to provide further guidance/case studies on:

- (i) what level of evidence is required for having obtained direct marketing consent or established a legitimate interest ground (as the case may be) for processing. There is some confusion that the more evidence organisations have to retain in order to be able to demonstrate compliance, the less likely they are to comply with the data minimization principle;*
- (ii) how the legitimate interest ground under the GDPR with regard to processing personal data, interacts with the consent requirement under PECR to physically send direct marketing messaging. There is some confusion over the requirement, for example, to justify processing connected to direct marketing (e.g. data analysis or matching) under the basis of legitimate interests on the one hand, and on consent for the purposes of sending the electronic communication on the other.*

Q11 Do you have any other suggestions for the direct marketing code?

Guidance would be useful on whether the ICO considers that the recently implemented Geo-blocking Regulation (EU) 2018/302 would have implications for direct marketing and, if so, what those implications might be.

About you

Q12 Are you answering these questions as?

- ☐ A public sector worker
- ☐ A private sector worker
- ☐ A third or voluntary sector worker

- ☐ A member of the public
- ☐ **A representative of a trade association**
- ☐ A data subject
- ☐ An ICO employee
- ☐ Other

If you answered 'other' please specify:



Q13 Please provide the name of the organisation that you are representing.

The Institute of Practitioners in Advertising

Q14 We may want to contact you about some of the points you have raised. If you are happy for us to do this please provide your email address:

Thank you for taking the time to share your views and experience.